

- (1) Whether claimant met with personal injury by accident on the dates alleged.
- (2) Whether claimant's accidental injuries arose out of and in the course of her employment.

- (3) Whether claimant provided timely notice of her accident.
- (4) Whether the relationship of employer and employee existed on the dates of the alleged accident.
- (5) Whether the parties are covered by the Workers Compensation Act.
- (6) Whether claimant served timely written claim for compensation upon respondent.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire record, together with the arguments and briefs of the parties, the Appeals Board finds that the relationship of claimant with the respondent was that of an independent contractor and, therefore, the Kansas Workers Compensation Act does not apply.

Claimant's work for respondent consisted of assembling dolls from pieces provided by respondent. Claimant picked the materials up from respondent but performed all the assembly work at her home. Claimant was free to perform the work during whatever hours she chose. She was paid by the finished product, rather than by the hour, and respondent did not withhold any amounts from claimant's earnings for taxes or other purposes. The only tools utilized by claimant were scissors and a hot glue gun which claimant herself provided. She performed this work on a part-time basis and was free to perform other work. Claimant did have another part-time job driving a school bus.

Claimant's work activities were performed without supervision. Respondent was interested only in the finished product, although it also controlled claimant's production to some extent. Claimant could decide how much work she would take on, provided it was available, but respondent expected it to be completed within a certain time frame. Within these parameters claimant was free to select her own hours.

Based upon all the facts and circumstances the Appeals Board finds claimant's relationship with respondent was more akin to that of an independent contractor than of an employee. This also appears to have been the understanding between claimant and respondent as they had entered into an agreement providing for same. Claimant conceded that, although she had been treated as an employee when she initially began work for respondent, the relationship changed and during the period for which the accident is alleged, claimant and respondent had a written independent contractor agreement. The Appeals Board finds claimant has failed to establish the existence of an employer and employee relationship on the dates of accident.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Special Administrative Law Judge Michael Harris dated June 14, 1996, should be, and is hereby, reversed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August, 1996.

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BOARD MEMBER

c: Joseph Seiwert, Wichita, KS  
Gregory D. Worth, Lenexa, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director